REMARKS

The Final Office Action, mailed June 28, 2007, considered claims 1–2, 5–13, 15–30, 38–43 and 45–52. Claims 1, 2, 6, 10, 11, 12, 21, 25, 27, 28, 38–41, 43, 45, 49, and 50 were rejected under 35 U.S.C. § 102(b) as being anticipated by Suzuki, U.S. Patent No. 5,956,488 (filed Mar. 15, 1996) (hereinafter Suzuki). Claims 5, 7, 15–17, 20, 29, 30, 42, and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of Kuhn, U.S. Patent Pub. No. 2002/0157112 (filed Mar. 13, 2001) (hereinafter Kuhn). Claims 8, 9, 46, 47, and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of Imajima et al., U.S. Patent No. 6,211,901 (filed May 21, 1996) (hereinafter Imajima). Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of Durana et al.. U.S. Patent No. 6,018,765 (filed Jan. 23, 1997) (hereinafter Durana). Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki. Claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of Kuhn, and further in view of Durana. Claims 22–24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of McClain, U.S. Patent No. 6,772,214 (filed Apr. 27, 2000) (hereinafter McClain). Claim 51 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of Imajima and further in view of Stoel et al, U.S. Patent No. 5,905,942 (filed Feb. 18, 1997) (hereinafter Stoel).[1]

By this response, claims 1, 10, 11, 25–30, and 38 are amended and claims 53 and 54 are newly presented. Claims 1–2, 5–13, 15–30, 38–43, and 45–54 remain pending. Claims 1, 10, 11, 25, and 38 are independent claims which remain at issue. Support for the amendments may be found within Specification p. 28.[2]

As reflected in the claims, the present invention is directed generally toward the aggregation of streaming media to improve network performance. Claim 1 recites, for instance, in combination with all the elements of the claim, receiving by an aggregation module a plurality of requests for real time streaming media. The method includes the aggregation module determining whether the number of requests received is greater than a defined maximum number of requests

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] However, it should be noted that the present invention and claims as recited take support from the entire Specification. As such, no particular part of the Specification should be considered separately from the entirety of the Specification.

that maintains a connection rate of a shared network at a preferred level and aggregating a plurality of requests into a single request for a single copy of the real-time streaming media. The aggregation module sends the single request for a single copy of the real-time streaming media to the wide area network. The single copy of the media is buffered at the aggregation module and is then sent to the plurality of receivers. Claim 10 is a computer program product of the method of claim 1.

Claim 11 recites, in combination with all the elements of the claim, a method including receiving at an aggregation module a request for streaming media accessible via a network from each of a plurality of receivers and the aggregation module determining whether the number of requests received is greater than a defined maximum number of requests that maintains a connection rate of a shared network at a preferred level. The method also includes aggregating a plurality of requests into a single request for a single copy of the real-time streaming media and sending the single request for a single copy of the streaming media to the network through a proxy module in communication with the aggregation module. When a copy of the media is received, the copy is buffered at the aggregation module. Finally, a stream of the buffered copy is delivered to a termination system for transmission to each of the plurality of receivers, where each of the plurality of receivers receives substantially the same packets of the buffered copy of the streaming media. Claim 25 is a computer program product embodiment of the method of claim 11.

Claim 38 recites, in combination with all the elements of the claim, a system for displaying media retrieved from a network to a plurality of receivers. The system includes a source module storing media and a plurality of receivers communicating with the source module via a network, each of the plurality of receivers being configured to generate a request and receive the media from the source module at a first connection rate. The system also includes an access module communicating with the plurality of receivers and the source module through the network, the access module being configured to receive the request for media, determine whether a number of requests is greater than a defined maximum number of requests that maintains a connection rate of a shared network at a preferred level, aggregate requests by removing redundant requests to create a single request for a single copy of the real-time streaming media, send the single request for a single copy of the media to the network, and then subsequently change the delivery of the

streaming media from a first format to a multicast format based upon changes to the first connection rate as media is delivered to two or more of the plurality of receivers.

Concerning the independent claims, 1, 10, 11, 25, and 38 rejected under 35 U.S.C. § 102(b) as being anticipated by Suzuki:

Each of the independent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by Suzuki.[3] The Applicant submits, however, that Suzuki fails to teach each and every element of the present invention as recited in the claims and fails to teach the elements being arranged as required by the claims. The Applicant respectfully reiterates the arguments put forth in previous responses concerning the distinctions between the present invention as recited in the independent claims and Suzuki.

Notwithstanding, however, the Applicant has amended the each of the independent claims to include elements and limitations not taught by Suzuki. In particular, Suzuki fails to teach that it is determined whether a number of requests received is greater than a defined maximum number of requests that maintains a connection rate of a shared network at a preferred level. As each of the independent claims now recites these elements, a rejection of claims 1, 10, 11, 25, and 28 under 35 U.S.C. § 102(b) in view of Suzuki is not proper and should be withdrawn.

Accordingly, the Applicant respectfully requests that the rejections of claims 1, 10, 11, 25, and 28 be withdrawn and he Applicants also respectfully request each of the independent claims be favorably reconsidered.

Concerning the newly added dependent claims:

The previous limitation concerning multicasting has been deleted from the independent claims but has been preserved within newly added dependent claims. The Applicant respectfully disagrees with the Examiner concerning Suzuki's purported teaching of the use of a multicast format. Although

> "the examiner agrees that multicast format is not inherent to data reaching
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> multiple input/output units after being sent once from a source and that there is a

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[3] Office Communication p. 5 (paper no. 20070620) (mailed June 28, 2007).

distinction between broadcasting and multicasting data"[4]

the Examiner asserted that

> "In broadcasting, a message is send to everyone on a network, whereas multicasting sends a message to a select list of recipients (see http://www.webopedia.com/TERM/b/broadcast.html). In the case of Suzuki, the select list of recipients is the terminals requesting the same data. Since requested data reaches a select list of requesters after being sent from the source, the examiner interprets this as a multicast format and further interprets the determination made at the data management unit to be a determination to switch from a first format (point-to-point) to a multicast format. Thus, the examiner concludes that Suzuki meets the limitation of "changing the delivery of the streaming media from a first format to a multicast format," as currently claimed."[5]

The Applicant submits that even though the "requested data reaches a select list of requesters," it cannot be interpreted that multicasting was the method of transmission. As there are myriad different method available for transmission, it is certainly possible that data can be sent to a select group of requesters without the method of transmission being multicasting. The Applicant respectfully submits that Suzuki is silent as to multicasting and that, because other transmission methods are possible which are consistent with the teachings of Suzuki, multicasting cannot be considered inherent to Suzuki.[6] It is certainly possible and consistent with Suzuki that the terminals of Suzuki are sent individual packets or that a broadcast packet is sent to all terminals. Consequently, the Applicant submits that it is error to interpret Suzuki as teaching such multicasting.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending
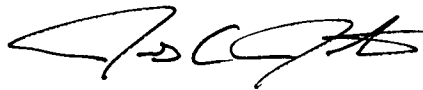
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[4] Office Comm. pp. 3–4.

[5] Office Comm. p. 4.

[6] The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112; *see also In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 30th day of July, 2007.

Respectfully submitted,

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